

REMARKS

This Application has been carefully reviewed in light of the Final Action mailed September 7, 2004. In order to advance prosecution of the present Application, Claims 1-3, 9, 10, 12, and 16 have been amended and Claims 17-24 have been added. Applicant respectfully requests reconsideration and favorable action in this Application.

The Examiner issued a Final Action on September 7, 2004. Applicant respectfully requests continued examination of this Application in view of the following comments.

Claims 1, 2, 4, 5, 7-11, and 13-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cao, et al. in view of McAllister, et al. Independent Claims 1 and 10 recite in general the ability to send a third message over said reverse notification path, from said second switch to said first switch, in response to the second switch receiving data from the first switch in order to control protection switching by said first switch. By contrast, the Cao, et al. application performs protection switching at its downstream egress router as opposed to the upstream first switch of the claimed invention. Moreover, the Examiner readily admits that the Cao, et al. application does not disclose the sending of the third message. To support the deficiency in the Cao, et al. application, the Examiner cites the keep-alive polling process of the McAllister, et al. patent. However, the McAllister, et al. patent requires the constant sending of keep-alive protocol messages and the return of acknowledgment messages independent of data transfer between nodes. Thus, the McAllister, et al. patent does not send a third message from a second switch to a first switch in response to data being received at the second switch from the first switch as required by the claimed invention. Support for the above

recitation can be found at page 10, lines 2-5, of Applicant's specification. Therefore, Applicant respectfully submits that Claims 1, 2, 4, 5, 7-11, and 13-16 are patentably distinct from the proposed Cao, et al. - McAllister, et al. combination.

Claims 3 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cao, et al. in view of McAllister, et al. and further in view of Aukia, et al. Independent Claim 1, from which Claim 3 depends, and Independent Claim 10, from which Claim 12 depends, have been shown above to be patentably distinct from the proposed Cao, et al. - McAllister, et al. combination. Moreover, the Aukia, et al. patent does not include any additional disclosure combinable with either the Cao, et al. or McAllister, et al. patents that would be material to patentability of this claim. Therefore, Applicant respectfully submits that Claims 3 and 12 are patentably distinct from the proposed Cao, et al. - McAllister, et al. - Aukia, et al. combination.

Claim 6 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Cao, et al. in view of McAllister, et al. and further in view of Lemieux. Independent Claim 1, from which Claim 6 depends, has been shown above to be patentably distinct from the proposed Cao, et al. - McAllister, et al. combination. Moreover, the Lemieux patent does not include any additional disclosure combinable with either the Cao, et al. or McAllister, et al. patents that would be material to patentability of this claim. Therefore, Applicant respectfully submits that Claims 3 and 12 are patentably distinct from the proposed Cao, et al. - McAllister, et al. - Lemieux combination.

Claims 17-24 have been added to provide system type claims for this Application. Applicant respectfully submits that Claims 17-24 are patentably distinct from the cited art.

Attached herewith is a check in an amount of \$790.00 made payable to the "Commissioner of Patents and Trademarks" to satisfy the request for continued examination fee of 37 C.F.R. §1.17(e).

With the presentation of eight new claims, an additional filing fee is due. Attached herewith is a check made payable to the "Commissioner of Patents and Trademarks" in an amount of \$72.00 to satisfy the excess total claims fee of 37 C.F.R. §1.16(c).

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.

Attorneys for Applicants



Charles S. Fish

Reg. No. 35,870

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CORRESPONDENCE ADDRESS:

2001 Ross Avenue, Suite 600
Dallas, TX 75201-2980
(214) 953-6507
Customer Number: 05073